

5 Phil. 180

[G.R. No. 2651. October 27, 1905]

**MACARIO CASTRO, PLAINTIFF AND APPELLANT, VS. CARMEN CASTRO,
DEFENDANT AND APPELLEE.**

D E C I S I O N

JOHNSON, J.:

This is a proceeding under section 499 of the Code of Procedure in Civil Actions.

The judge in his return states that the judgment in question was rendered on the 15th day of February, 1905, in favor of the defendant against the plaintiff and that the lawyer for the plaintiff verbally excepted to the judgment on the same day when notified of it. This verbal exception was sufficient as there is no provision of law which requires such an exception to be in writing.

He also states that counsel for the plaintiff verbally announced his intention to present a bill of exceptions.

This verbal announcement was also sufficient, for there is no law which requires that announcement to be in writing.

The court also states that this verbal announcement was not made within ten days after the exception was taken to the judgment. The law does not require this act to be done within ten days, but, on the contrary, provides that it shall be done as soon as practicable.

In reference to the application of Act No. 1123, it is evident that the court was led into error by the circular issued by the clerk of this court on the 14th day of June, 1904.

Act No. 1123 made no change whatever in the method of preparing

bills of exceptions in Courts of First Instance. Bills of exceptions should be prepared in the same way now as they were before the passage of that act. It did, however, make two changes in the practice after the bill of exceptions had been signed, allowed and filed in the court below. Under the former law it was the duty of the clerk to make a copy of the bill of exceptions and send that to the clerk of this court. Under this act it is the duty of the clerk to send up the original bill of exceptions. The other change was in the matter of printing the bill of exceptions. The former law provided that the bill of exceptions should be printed. Act No. 1123 provides that the *evidence* contained in the bill of exceptions *shall not be printed*.

These were the only changes made by the law. It is still necessary for the party preparing the bill of exceptions to include in it the evidence received in the court below if he has made a motion for a new trial and desires to have the evidence reviewed in this court.

The bill of exceptions presented in this case was prepared in the proper form.

We hold that the reasons given by the court below for his refusal to sign the bill of exceptions are insufficient. The order provided for by section 499 of the Code of Procedure in Civil Actions will be issued. So ordered.

Arellano C.J., Torres, Mapa, Carson, and Willard, JJ., concur.